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APPENDIX TO RESPONDENT'S BRIEF

**In the
United States Court of Appeals
FOR THE FIFTH CIRCUIT**

No. 15,311

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

THE BABCOCK AND WILCOX COMPANY,
Respondent.

**ON PETITION FOR ENFORCEMENT OF AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD**

**U. S. COURT OF APPEALS
FILED**

MAR 9 1955

John A. Feehan, Jr.
CLERK

**FISHER, McLAUGHLIN &
HARRISON,**

**Liberty National Bank
Building,
Paris, Texas,**

Attorneys for Respondent.

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THE BABCOCK AND WILCOX COMPANY,

Respondent.

(11) MR. FISHER: Thank you, Sir.

Mr. Martin, before any evidence is received, the respondent would like to renew and call to the attention of the Examiner the motion to dismiss which has heretofore been acted upon, and also a motion for a bill of particulars which has heretofore been acted upon. I urge both of those motions at this time with only the modification as to the bill of particulars which is shown by the Examiner's order and the response to the order made by General Counsel;

.

(19) TRIAL EXAMINER MARTIN: I will deny Mr. Fisher's motion and I will grant the General Counsel's motion to strike the various paragraph from the complaint as enunmerated by Mr. Rhea.

Now, then, the motion is in effect renewing your motions that are contained in General Counsel's Exhibit 1-F?

* * * * *

(20) TRIAL EXAMINER MARTIN: Very well, we will resume.

Did you wish to urge anything further upon me before I pass on your motions contained in General Counsel's 1-F, Mr. Fisher?

MR. FISHER: Please, Your Honor.

First, in view of the action of the Examiner in striking Paragraphs 5, 6 and 7 of the complaint and portions of Paragraphs 10 and 11, and all of Paragraph 9, respondent, in addition to all other grounds for dismissing the complaint, including the ground stated orally at the hearing and the grounds set out in the exhibit, urges that the complaint is wholly disconnected with the purported charge, General Counsel's Exhibit 1-A, which charges only the termination of the employment of Temple G. Ray and a refusal to employ the named employee, Temple G. Ray. Then by acts set forth in Paragraph A above and by other actions and conducts, it by its officers, agents and employees interferred with, restrained and coerced its employees in the exercise of the rights guaranteed in Section

7 of the Act. The point respondent is endeavoring to make in this connection is that the complaint as it now stands is not only not based upon any bona fide charge but is wholly the act of General Counsel or the Regional Director and constitutes an original complaint and charge on (21) the part of General Counsel and the Regional Director, or the Board, which ever way may properly express it.

There is a motion for a bill of particulars, but no particular or specific motion to strike so far as I can remember in respondent's answer filed in connection with respondent's answer involving Paragraph 12 in the complaint, and when the Examiner has acted upon respondent's to dismiss, well, then, we would like to present a motion to strike certain portions of the complaint if the Examiner should overrule our motion to dismiss the complaint in its entirety.

* * * * *

(22) MR. FISHER: I didn't so state, but upon the same ground and grounds, I desire to move that Sections 2, Sub Sections 6 and 7 of the Act be stricken from the third and fourth line of the complaint, and that motion is intended to be addressed to each separately as well as collectively.

TRIAL EXAMINER MARTIN: I will deny that motion and those motions.

* * * * *

(114)

C. T. RAY,

a witness called by and on behalf of the General Counsel;

being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER MARTIN: Give us your name and address, please.

THE WITNESS: C. T. Ray, 530 Irwin Keasler Building, Dallas, Texas.

DIRECT EXAMINATION

* * * * *

(128) Q. (By Mr. Rhea) Now I will hand you, Mr. Rhea, what we have marked for identification as GC-4 and ask you to state for us, if you will, please, what that is.

A. This is a map covering the area from which the employees of the Babcock & Wilcox plant were hired within these areas.

* * * * *

(139) TRIAL EXAMINER MARTIN: Let me ask two or three questions.

* * * * *

(140) MR. FISHER: Now, respondent objects to all of this testimony being brought out by the Examiner, the testimony having been given when the Respondent couldn't object except to interrupt the witness in the middle of what he was saying.

TRIAL EXAMINER MARTIN: You are objecting on the ground that is hearsay?

MR. FISHER: We move to strike it.

TRIAL EXAMINER MARTIN: I will let the matter stand even though it is hearsay.

(142) Q. (By Trial Examiner Martin) Now, the question is, and I want this question answered, I want to know where you went to contact people you thought that were employees of the company; now, don't tell me you went to contact people that you knew were, I want to know where you went to contact people you thought were employees of the company?

A. I didn't go anyplace to contact people that I thought were employees of the company.

(147) (General Counsel's Exhibit No. 4, Witness Ray, was received in evidence.)

(151) CROSS EXAMINATION

Q. (By Mr. Fisher) Mr. Ray, how much time would you say you had spent in Paris and in and around Paris?

A. Working on the Babcock & Wilcox plant?

Q. No, in your lifetime?

A. I spent approximately, oh, I'd say in and out of here approximately a year, maybe a year and a half.

(154) Q. (By Mr. Fisher) And you know that the sun rises in the east and sets in the west, do you not?

A. I know that from learning it in school, I am not that ignorant.

* * * * *

(155) Q. The first name of a town that you gave in response to Mr. Rhea's question that you had visited that wasn't shown on (156) the map, GC-3, was Cunningham, Texas, was it not?

A. That is right.

Q. Why did you tell the Examiner that Cunningham, Texas, was not shown on the map?

A. Because I have never been able to find it on the map.

Q. Have you ever looked?

A. Yes, I have. How do think I ever tried to get there if I didn't look on the map.

Q. Did you really get there?

A. Yes, I did.

Q. Where is it?

A. Back out this way.

Q. What direction is that?

A. I don't know what direction that is; I asked and I found my way out there. I don't have all that compass on the car and all that stuff.

* * * * *

(157) Q. And that is the direction in which you said Cunningham was from Paris?

A. That is right.

Q. All right, now, with reference to north, south, east and west, which direction is that from Paris?

MR. RHEA: If the Examiner please, it is quite clear in (158) this testimony that this witness does not know the distance north, south, east and west. It has been brought out three or four times in this testimony, and I believe that this is highly irrelevant, irregular and immaterial and improper for respondent Counsel to continually refer to the directions north, south, east and west, and I think the Examiner should make it clear to him when he reached the limits of such expiration.

* * * * *

(159) Tell us if you can, what direction you were pointing?

THE WITNESS: I don't know.

* * * * *

(161) Q. Well, which is north on this map, the top or the bottom or one of the other sides?

A. I don't even know that.

* * * * *

(170) Q. (By Mr. Fisher) How many times did you go to Tigertown?

A. I don't know; I have no idea, I didn't count them. I have no idea how many times I went out there.

Q. The drivers on the side where you were stationed, did they reach out to the man in the front of you and pick up circulars after you reached the drive?

A. Yes, sir.

(751) CROSS EXAMINATION

(752) Q. When a car wants to turn to the right, is it necessary for him to get into a right lane on the company driveway before he reaches the roadway?

A. No, sir, I wouldn't think so.

Q. Let me ask you if employees who carry other riders move over on to a right or south lane before they reach the State Highway, normally, or, usually, either one they prefer?

A. Will you please state that again?

Q. When drivers in cars who want to pick up passengers, who may be other employees, do they normally move to a right or south lane before they move directly toward the State Highway to pick up passengers around the gate?

(753) A. Well, you see, they are in a parking lot and like if somebody else is driving with somebody else, is that what you mean?

Q. Yes.

A. They just walk out in the cars together and get in them and go out like anybody else.

(756) HENRY GRADY WILSON,

a witness called by and on behalf of the Respondent, being first duly affirmed, was examined and testified as follows:

TRIAL EXAMINER MARTIN: Give us your name and address, please.

THE WITNESS: Henry Grady Wilson, Sumner, Texas, Route 1.

DIRECT EXAMINATION

* * * * *

(758) Q. Do you or do you not recall any occasion since you have been working at the Babcock & Wilcox Company plant that union literature was being passed out by anyone out near the entrance of the north driveway of the plant into the farm-to-market highway?

A. Yes, sir.

Q. Can you fix the date of the occasions, and I mean the approximate date of the occasion or occasions that you observed union literature being passed out?

A. I am sorry. I can't.

Q. Sir?

A. The approximate date, I am sorry, I can't do it.— July, I just don't remember.

Q. You mentioned the month of July.

A. I might be just bad wrong on that.

Q. Can you estimate how many times you were out there during this year and a half?

A. I think it would be unfair to estimate it because I have no idea, no idea how many times I was out there.

* * * * *

(179) Q. Have you been to any community in Lamar County known as Cothran?

A. I don't think I have.

* * * * *

(180) Q. All right, I will see if I can assist you, Mr. Ray. Can you read right there to the Trial Examiner? My bifocals are pretty weak, but you try reading there where I am pointing, which is southeast of Paris, the exact direction that you pointed with your finger, and see, sir, if you will not now follow me, C-u-n-n-i-n-g-h-a-m, and that you have marked with a pencil through the "H-A" and probably the "G"?

A. I can see that.

Q. All right, now, you have looked again, and you have told me three times, according to what you say, that it is not on there. Now, what are you going to tell the Trial Examiner about what is on there?

* * * * *

(181) THE WITNESS: Said that Cunningham was on the map?

I just now admitted it to him when he showed it to me. I said before then I did not see it on the map. Now, I did

not see it on the map. Now, if you want me to tell you a lie about it, hell, I saw it three days ago, if that is what you want me to tell you.

Q. (By Mr. Fisher) But you see it now?

A. Yes, sir.

* * * * *

(182) Q. Now, having looked at Cunningham on the map, will you now state to the Trial Examiner which direction it is from Paris on the map?

A. I still don't know which direction it is from Paris on the directions. I told you it was back out this way.

Q. Now, you do recall having testified that the top of the map was north, do you not?

A. That is right.

* * * * *

(183) Q. (By Mr. Fisher) You do recall testifying since you have been on the witness stand that the top of the map was north?

A. Yes, by looking at the bottom here of this thing here on the bottom.

Q. Now, sir, do you recall testifying that the right side of the map was east?

A. Yes, by the same method.

Q. And you agreed then, of course, that it followed that the left side is West and the bottom south?

A. Right.

Q. That is right?

A. Yes, sir.

Q. Now, bearing in mind what you have said, please look at Cunningham as is shown in the map and look at Paris on the map and state to the Examiner which direction Cunningham is from Paris?

A. Well, I still don't know which direction it was in.

Q. All right, sir, you do see Paris on the map?

A. That is right.

Q. And you do see Cunningham on the map, do you, sir?

A. Yes.

Q. All right, now, state to the Examiner from looking at the map which direction Cunningham is from Paris?

(184) A. I couldn't say, I don't know.

* * * * *

(197) TRIAL EXAMINER MARTIN: Let me ask you this, Mr. Witness, about how many people live in Cunningham, have you any idea?

THE WITNESS: No, sir, I don't have any idea what the population of it would be. It would be very small.

TRIAL EXAMINER MARTIN: About how many live in Tigertown?

THE WITNESS: I don't know that, either. It is very small. All of those communities are very small, maybe 50.

or 75 or a hundred people, something like that, maybe not that many.

* * * *

(217) Q. (By Mr. Fisher) Now, Mr. Ray, can you recall when you referred to Ambia, can you recall one thing in the world about Ambia in Lamar County other than this store that you don't know on which side of the road it is situated?

(218) A. No, only that there is not too many people live up in that part of the country and that is about all that I can remember about the thing other than there is a store there.

* * * *

Q. And how far do you say it is from Paris?

A. I will say Ambia is about 21 miles, 18 to 21 miles, something like that.

* * * *

(331) Peter P. Haubner,
called as a witness by and on behalf of the General Counsel,
being first duly sworn and examined and testified as
follows:

* * * *

(382) EXAMINATION.

Q. (By Trial Examiner Martin) Mr. Haubner, have you sent out any leaflets through the mails to Babcock & Wilcox employees which were just, shall I say, advertising matter for the union?

A. We did not.

Q. The things you sent through the mails were to people who had signed up for the union, and only those people?

A. Must I answer it in that manner, Mr. Examiner? Again, it is reflecting as to whether or not that person had or had not signed or even indicated whether they have signed.

Q. Well, can you give me any idea what sort of information you conveyed through the mails to these employees, just generally?

(383) A. Information conveyed to the employees on these particular individual letters were rates pertaining to other Babcock plants, and so forth, and conditions of the contractual relations.

* * * * *

(385) CROSS EXAMINATION (continued.)

(403) Q. (By Mr. Fisher) Mr. Haubner, at that time and on that occasion when Mr. Williams asked you to remove yourself from the company property, did you remove yourself from the property?

A. Mr. Fisher, as I stated before, I did not know where the company property started or stopped and I didn't know whether I removed myself from the property or not.

Q. Well, did you—

A. I did move down toward the highway, yes.

Q. All right, did you move down into the highway or the entrance from the highway to the driveway and onto that portion of that entrance as covered by gravel?

A. No, sir, Mr. Fisher, I had never left the concrete until we finally decided to leave. I stayed on out on the concrete at all times. I was not down in the gravel section because automobiles were in there and I couldn't have gotten in there if I had wanted to. I was on the cement.

* * * *

(532) HOMER L. COLMAN,

was called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

* * * *

(533) DIRECT EXAMINATION

* * * *

(534) Q. Since you have been employed at Babcock & Wilcox Company, has there been any occasion on which anyone was distributing any literature or circulars of any kind when you were going into or leaving the plant?

A. Either on two or three occasions when we were leaving, they were at the intersection of the highway.

Q. What do you mean by "the intersection of the highway"?

A. Well, where we leave the B&W property, where we enter the highway from the personnel office there, oh, I

guess it is close to a hundred yards, I suppose, from where we get in our cars to where we enter the highway.

* * * * *

(541) CROSS EXAMINATION

Q. (By Mr. Rhea).

* * * * *

(552) Q. Now, there was a third time, I believe you said, when literature was passed out, is that the right statement?

A. I believe there was a third time.

(553) Q. Can you give us any help with reference to when that occurred?

A. No, sir I couldn't. It was probably a month later. It seemed to me like that if it was three times or two, I would say that they were a month apart.

Q. Now, I believe it is your testimony that you couldn't identify any of the men that you saw there passing out literature of some kind; is that right, sir?

A. That is right.

Q. Would it help you any to see Mr. Haubner standing up? Do you think that that would assist you in any way in identifying him as one of the men?

A. No, sir, I wouldn't say that I remembered him or didn't.

Q. Do you have any recollection now as to about how tall the man was or how old he was?

A. I remember one of two occasions there was a pretty good sized fellow out there.

Q. Now, was this the man that you are now talking that Mr. Williams was talking to?

A. I wouldn't definitely say. I wouldn't say it was because it would be one on the right side and one in the middle and one on the left. There would be three because the cars park there at the entrance of the highway. Some go to the right and some to the left and the way I remember it, there were three of them and he was talking to the man on the left-hand (554) side of the driveway.

* * * * *

(556) TRIAL EXAMINER MARTIN: One question, Mr. Colman, were there any employees trying to get into the plant from the highway or was all the traffic going out of the plant at that hour?

THE WITNESS: I expect everything was already in of the night shift. The night shift was already in.

TRIAL EXAMINER MARTIN: Are you sure there was a night shift at that time?

THE WITNESS: Yes, sir, I will say that.

TRIAL EXAMINER MARTIN: When does the night shift start?

THE WITNESS: At 5:30 in the afternoon.

TRIAL EXAMINER MARTIN: As a matter of custom, the men were driving in for the incoming shift and they

had come in and parking their cars and were either clocking in or ready to clock in at the beginning of the shift, and that is all done before the outgoing shift gets to the parking lot to get (557) their cars and drive home; is that correct?

THE WITNESS: That is right.

* * * * *

(584)

HUNTER RICHEY,

was called as a witness by and on behalf of respondent, being first duly sworn, was examined and testified as follows:

* * * * *

(604)

REDIRECT EXAMINATION

Q. (By Mr. Fisher) Mr. Richey, how do you travel from home to your work, usually?

A. In what conveyance?

Q. Yes.

A. There are three of us boys that ride together.

Q. How long have you been engaged in the practice of three (605) of you riding together to and from work?

A. About the last sixty days.

Q. Prior to that time, how did you travel to and from your work at the Babcock & Wilcox Company?

A. There were six or seven of us that came in one car.

Q. And where did the six or seven of you live?

A. We lived there in the Forest Hill Community, neighbors.

Q. During the time that you have either been traveling with five or six others or the time that you have been traveling to and from your work with two other persons, have you received any union literature or had any union literature of any kind offered you while on your way to or from work?

A. Yes, on two occasions.

Q. Did you or did you not receive the literature that was offered you on the two occasions?

A. I did receive it.

Q. Did or did not the other persons riding with you receive the same literature that you received?

A. Yes.

Q. Now, please, Hunter, fix as best you can, and I realize you are sleepier than I am, the date or each one of those dates just as best you can. If you don't have any idea about the date, if you will state about how long ago it was, either the first time or the last time and then about the length of time between the two times, that will be fine. Just give your (606) best judgment, what ever it is.

A. It is along the last of July, to the best of my knowledge, that I received the first literature.

Q. And when did you receive the second literature?

A. A week or so later.

Q. Did you or did you not receive the literature on both occasions at the same place?

A. Yes, sir.

Q. Where was that place?

A. It was in the driveway as we were going out as we were going home.

Q. Did you or did you not on either of those occasions see Louis Williams near or on the driveway?

A. No, sir, I did not see him out there.

Q. Were you leaving from your work or going to your work at the time you and the others received the literature there?

A. We were leaving from our work.

Q. On those occasions, were you riding with five or six other men or were you riding with the two other men?

A. Five or six other men.

MR. FISHER: That is all, thank you.

MR. RHEA: I want to move at this time to strike out the testimony with reference to the passing of literature, as none of it is relative to any issue in this case that I (607) am aware of.

MR. FISHER: Did I say union literature or not?

MR. RHEA: I think you said literature.

MR. FISHER: I believe I said "union" one time.

TRIAL EXAMINER MARTIN: Did you understand he was talking about union literature in your answers?

THE WITNESS: Yes, sir.

TRIAL EXAMINER MARTIN: I will let the testimony stand.

* * * * *

(721) C. H. BEARD,

a witness called by and on behalf of the Respondent, being first (722) duly sworn, was examined and testified as follows:

TRIAL EXAMINER MARTIN: Give us your name, please.

THE WITNESS: C. H. Beard, or Charlie Beard, 1001 North Main.

* * * * *

(735) CROSS EXAMINATION

* * * * *

(747) Q. Now, Mr. Haubner, you said, I believe, moved down to the gravel after Mr. Williams asked you to do so; is that right?

A. When Mr. Williams asked him to get off the property, he looked down and asked where the line was and started to move back, as I remember.

Q. Did he reach the gravel?

(748) A. I don't remember whether he reached the gravel or not. He just moved a step or two backward.

Q. When you say "backward," do you mean he might have moved north or east?

A. It was east toward the highway.

Q. Toward the highway?

A. Yes, sir.

Q. Do you know of your knowledge whether he moved off of the company property at that time?

A. No, sir, I sure don't. I don't know where the line is.

Q. You don't know where the line is?

A. No, sir.

Q. If I were to show you the line on the map which we have been using here, can you tell me whether Mr. Haubner was inside of the company property or outside?

A. I would be afraid to say because I don't know whether I could tell you or not.

Q. I see.

A. But I am sure that he was close to the line when he stepped back east.

Q. All right.

A. That would be my judgment.

Q. Mr. Haubner didn't move in any other direction except east; is that right?

A. No, sir.

(749) Q. What was Mr. Haubner doing; did you watch him?

A. He was handing out circulars.

Q. What was he doing with the circulars, was he holding them out like this?

A. He was just handing them as the cars came by.

Q. Did the drivers reach out of the cars and get the circulars?

A. Some of them did.

Q. You saw some of them reach out and get it?

A. Yes, sir.

Q. After Mr. Williams walked up to the drive, did you see any drivers reach out and get the circulars?

A. I don't remember whether they did or not.

Q. You don't have any recollection about that?

A. I remember seeing some boys in the cars get them as they would go by.

Q. Before or after Mr. Williams came down?

A. That was after, I imagine.

Q. Let's don't imagine. Did you see them after he came down or not?

A. I wouldn't say.

Q. On how many occasions did you observe union literature being passed out?

A. Twice.

* * * * *

(797) HENRY GRADY WILSON

resumed the stand and testified as follows:

TRIAL EXAMINER MARTIN: Mr. Wilson, you are still under oath. We are sorry we kept you waiting so long.

MR. FISHER: Except Mr. Wilson has given his testimony by affirmation.

DIRECT EXAMINATION (continued)

* * * * *

(805) Q. Where was the man that you referred to as being on the other side of the driveway from Mr. Williams and the man that was with him?

A. Well, there was more than one person.

Q. How many were there distributing literature?

A. Two.

Q. Two?

A. Probably with some handbills in their hands of some kind.

Q. Where were those men with handbills?

A. They were back on the edge of the highway up on the blacktop or concrete, whatever it is.

* * * * *

(812) Q. (Mr. Fisher) Mr. Wilson, has he has not any representative of the United Steel Workers of America called upon you at your home and discussed the union with you?

MR. RHEA: If the Examiner please, I object to that question for a variety of reasons. I thought we covered that territory about the first or second day of the hearing where identities of such kind were excluded from this record.

TRIAL EXAMINER MARTIN: Objection is sustained.
(813) MR. FISHER: The respondent makes an offer of proof in connection with the testimony of this witness that union representatives have on more than one occasion called on this witness at his home.

MR. RHEA: Objected to for the same reason.

TRIAL EXAMINER MARTIN: The offer is rejected.

Q. (By Mr. Fisher) Mr. Wilson, please state whether or not at places other than the entrance to the Babcock & Wilcox plant union representatives have communicated with you during the time that you have been employed at Babcock & Wilcox Company's plant?

MR. RHEA: Objected to for the same reason and for the further ground that it is wholly immaterial.

TRIAL EXAMINER MARTIN: Objection sustained.

MR. FISHER: And we make the same offer of proof that on more than one occasion they have talked to this witness.

TRIAL EXAMINER MARTIN: The offer is rejected.

Q. (By Mr. Fisher) Mr. Wilson, did or did not you seek the union representatives on the occasions that you saw them or did they come to you to talk to you?

MR. RHEA: If the Examiner please, the question assumes a statement of facts not in the record and I further object to it because it is wholly immaterial.

TRIAL EXAMINER MARTIN: Objection sustained.

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TRIAL EXAMINER MARTIN: The offer is rejected.

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MR. RHEA: If the Examiner please, the question assumes a statement of facts not in the record and I further object to it because it is wholly immaterial.

TRIAL EXAMINER MARTIN: Objection sustained.

MR. FISHER: On which ground, or is it sustained on both grounds, please? I do want to change the form of the question if (814) the form of the question has anything to do with it.

TRIAL EXAMINER MARTIN: Both grounds.

MR. FISHER: All right, it will be necessary to restate the question then.

Q. (By Mr. Fisher) Mr. Wilson, did you or did you not on any occasion look up a representative of the United Steel Workers or seek an opportunity to talk to a representative of the United Steel Workers?

MR. RHEA: We object to that.

TRIAL EXAMINER MARTIN: Sustained.

MR. FISHER: And I wish to make an offer of proof on the part of respondent that the witness did not look up the union representative or any union representative to talk to him.

MR. RHEA: We object to the offer.

TRIAL EXAMINER MARTIN: The offer is rejected.

Q. (By Mr. Fisher) Mr. Wilson, did or did not the union representative or union representatives on occasion or occasions come to you and discuss union with you?

MR. RHEA: We object; same reason.

TRIAL EXAMINER MARTIN: Sustained.

MR. FISHER: The offer of proof is that they did.

TRIAL EXAMINER MARTIN: Your offer is rejected.

* * * * *

(820)

LONNIE PARSONS

was called as a witness by and on behalf of the respondent, having been first duly sworn was examined and testified as follows:

TRIAL EXAMINER MARTIN: Give us your name, please.

THE WITNESS: Lonnie Parsons, Sumner, Route 2.

DIRECT EXAMINATION

* * * * *

(829) MR. FISHER: This witness will testify that the union communicated with him outside of the plant property and in the public highway by placing a union handbill in his car.

TRIAL EXAMINER MARTIN: Let me ask you this, there has already been testimony that many employees accepted union literature from the union representatives. Now, how do we add to the record by having men take the stand and saying, "I was one of the people who received union literature," how does that add anything to the record?

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TRIAL EXAMINER MARTIN: Well, there is testimony here, Mr. Fisher, that on one occasion, it seems to me, there was a figure (830) given, some 300, I find in my notes here, on June 15, on cross examination of Haubner where you brought out the fact that 300 or more pieces of literature were passed out on June 15, now, do you want me to sit here and listen to each of the 300 men testify they are one of the people who received it? How does that add anything to your record? You already have in the record on cross examination that 300 pieces of literature were passed out.

* * * * *

DIRECT EXAMINATION (continued)

Q. (By Mr. Fisher) Mr. Parsons, the Examiner has determined that you should not answer the questions that we

hoped to be able to propound to you with reference to receiving union literature; and, therefore there is no question.

(835) MR. FISHER: Now, the Examiner will remember the statement made with reference to the other witness, not Mr. Parsons, but respondent has numerous witnesses who collectively will testify to having been called upon by union representatives at their homes for the purpose of discussing the union and for the purpose of interesting them, the employees, in the union; that union representatives and the union have communicated with them at different times during the period that work has been going on at the Babcock & Wilcox Company plant in Paris through mail and by letters written to solicit their interest in the union and that union representatives have approached them on the street and talked to them soliciting their interest in the union, all of which is offered for the purpose of showing communications between the employees and the union and the direct communication by the union with the employees generally through these different means, being understood that the same witness would not testify to all of the facts, necessarily. Some witnesses will testify to letters and some to telephone calls from union representatives, some of those same ones to calls being made on them to their homes, and some to only one of the three means.

Now, I hope I have made that plain for the record, because the Examiner has indicated that he would not permit such proof and it does seem senseless for me to have these

witnesses come up here and have them brought in and have them sworn and ask them their name and address and ask them one question and then let the (836) Examiner tell me again that I have brought a witness up here to prove something that he told me I shouldn't and dress me down, so to speak.

TRIAL EXAMINER MARTIN: Mr. Rhea, isn't it possible to have a stipulation along the lines that Mr. Fisher has just mentioned, without mentioning any names?

MR. RHEA: Yes, I think it is. I want to say I don't think it is material at all, but I will join him in a stipulation based on his own statement that contacts were made at homes, by mail, by letter and on the street at numerous times.

MR. FISHER: By telephone?

MR. RHEA: Numerous times between union people and employees of the respondent.

MR. FISHER: Now, does that "union people"—I just don't know these words, "union representatives" is what I am talking about.

MR. RHEA: We will use the word "representative" if you want it.

TRIAL EXAMINER MARTIN: Now, I just want the record to have adequate stipulation. As I understand it,

Mr. Rhea is agreeing substantially with what Mr. Fisher said?

MR. RHEA: That is right, that if he called witnesses, they would so testify if presented here.

MR. FISHER: Well, in addition to that, you are stipulating that as a fact?

MR. RHEA: In addition I will stipulate that as a fact, both ways.

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(843)

LOUIS B. WILLIAMS

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

* * * * *

(919) FURTHER REDIRECT EXAMINATION

Q. (By Mr. McLaughlin)

* * * * *

(920) Q. From the Driveway 1, where you enter the driveway, Mr. Williams, and how far is it to the north before there is a lateral road at which an individual can turn off of Farm to Market Highway 137, do you know?

A. How far it is?

Q. Your best estimate, yes.

A. Well, it is Washington Street, and I would say a mile or three-quarters of a mile, or something, I don't know anything about distances.

Q. And I will ask you also how far that distance is from your north boundary line; that is, where the company property ceases until you reach the first lateral road where you can turn off of that Farm to Market Road?

A. Gee, well, let's see, if it is a mile from here to around over there, well, I would say it is three-quarters of a mile from (921) there on over to Washington Street.

Q. Well, is that your best estimate, the three-quarters of a mile from there is what I am trying to get at?

A. That is my best estimate. I have no idea about how accurate it is. I have never measured it and I have had no occasion to know.

Q. Now, do you know where the next lateral road—where the first lateral road to the south is after you leave the company property?

A. I don't recall one anywhere in the vicinity.

Q. You are talking about a road that would cross this one, where a person traveling in an automobile could turn off of Farm to Market Highway 137?

A. I don't recall one until you get on down the road, maybe a couple or three miles.

Q. And that is a couple or three miles South of the Babcock & Wilcox Company?

A. That is right.

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(122) EXAMINATION BY TRIAL EXAMINER
MARTIN

(929) Q. You have answered my question. I do have one more. I thought I wouldn't, but I want to ask one more question. You started to say, and I sort of cut you off a few minutes ago, something about the sheriff, I believe it was the sheriff or the Highway Patrolman patrolling the general area in front of the plant at various times.

(930) A. Yes, the Highway Patrol does that.

Q. Now, I take it from your testimony that the Highway Patrol increased the patrol of that area?

A. No, I would not say that.

Q. What is your testimony?

A. My testimony is that the Highway Patrol from the early days of when we, as our employees increased in numbers and they started, why, they set up the patrol, not regularly, but it was on a periodic basis, several times a week, but never on the same day and they did that so they could get those boys not to speed as they left and not to be violating the traffic laws, and a lot of the fellows have got tickets for it, and as I say, I haven't seen them there at 4:00 o'clock in the morning but I know of the boys that have got tickets, some of them, at that time of morning.

Q. What for, speeding?

A. Some for speeding, and some for getting out of the traffic improperly.

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